

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PAUL WORMSER)

Appearances:

For Appellant: Alfred B. Weiler, (by brief).

For Respondent: W. M. Walsh, Assistant Franchise Tax Commis-
sioner; Hebard P. Smith, Associate Tax Coun-
sel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Paul Wormser, to his proposed assessment of additional tax of \$243.38 for the taxable year 1937.

Under date of January 18, 1937, the Appellant and his wife, Amy J. Wormser, entered into a written agreement wherein 320 shares of the capital stock of S. & W. Fine Foods, Inc., were to be transferred to Appellant and his wife, in joint tenancy, as trustees. The agreement provided that "out of the corpus of the trust property, or the income thereof," the trustee might pay such sums as in their judgment should be for the benefit of their son, until he attained the age of 21 years, at which time the trust should cease, and determine as to one half (in value) of the trust property, and any unexpended accumulations. The remainder of the trust property was to remain in trust until the said son attained the age of 25 years, whereupon, it was to be delivered, with its accumulations, to the said son.

On March 15, 1937, within the knowledge of Amy J. Wormser, Appellant delivered to S. & W. Fine Foods, Inc., the 320 shares of its capital stock, representing the trust corpus, with a letter as follows: (Underscoring not shown in the letter of transmittal.)

"March 15, 1937.

S. & W. Fine Foods, Inc.,
155 Berry Street
San Francisco, Calif.

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Gentlemen:

On January 18th of this year I executed a document in which I stated I was transferring to Amy J. Wormser and myself jointly and to the survivor of us, as trustees, 320 shares of the capital stock of your company upon trusts set out in that document. These trusts were then and there accepted by Amy J. Wormser and myself. I did not at that time, however, make the transfer I discussed in that document, but I hand you herewith Certificates Nos. C1, C80, and C345, representing 372 shares of the stock of your company, with which I now desire to create the trusts referred to in that document. You will please transfer 320 of these shares to Amy J. Wormser and myself jointly and to the survivor of us, as trustees, and issue a certificate for the remaining 52 shares to me. The trust which I am creating by the transfer of these-es shall be irrevocable and not subject to termination at any time by me or by any person acting under or through me or on my behalf, and these shares shall be held on the trusts contained in the document dated January 18th, 1937.

Very truly yours,

(Signed) PAUL WORMSER"

Appellant filed a gift tax return with the Federal Government in 1938 specifying that the trust was irrevocable.

The Commissioner has taken the position that the letter of March 15, 1937, was insufficient to make the trust irrevocable, under Section 2280 of the Civil Code providing that

"Unless expressly made irrevocable by the instrument creating the trust, every voluntary trust shall be revocable by the trustor by writing filed with the trustee."

He further contends that the letter of March 15, 1937, was not intended as an amendment to the trust by reason of its informal character and the fact that it was sent to S. & W. Fine Foods, Inc., instead of being attached to the trust instrument as an amendment.

We believe that the conditions necessary for the creation of an irrevocable trust were properly met. The letter of March 15, 1937, should be construed as a part of the trust agreement, expressing the intent of the trustor as to irrevocability, rather than as an amendment thereto. The inartificiality as to its form does not preclude it from being construed as a part of the declaration. See Del Giorgio v. Powers, 27 Cal. App. (2d) 678. Legal title to the shares of stock was not vested in the trustees until the shares of stock were transferred, as requested in the letter under which the corporation was charged with knowledge that the

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trust could not be revoked. The trust was therefore contemplative, rather than actual, until the intentions of the **trustor**, including irrevocability, were fully expressed.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, **and good cause** appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of Paul Wormser, to the proposed additional assessment of \$293.38 for the taxable year **1937**, pursuant to Chapter 329, Statutes of 1935 as amended, be, and the same is hereby reversed. Said ruling is hereby set aside and the said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 14th day of June, 1943,
by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: **Dixwell L. Pierce**, Secretary